

SENATE BILL 2186  
By Kyle

AN ACT to amend Tennessee Code Annotated, Title 38; Title 39 and Title 48, relative to lotteries, including annual events authorized by the general assembly.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 48, Chapter 101, is amended by adding Sections 2 through 18 of this act as a new part.

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "501(c)(3) organization" means an entity which has received a letter from the internal revenue service recognizing its tax exempt status pursuant to 26 U.S.C.

§ 501(c)(3);

(2) "Annual event" means an event for the benefit of a 501(c)(3) organization which has been approved by the general assembly pursuant to Section 5 of Article XI of the Constitution of Tennessee;

(3) "Intentionally" means actual awareness of falsity or deception, but actual awareness may be inferred when objective manifestations indicate that a reasonable person would have known or would have reason to know of the falsity or deception;

(4) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination of them;

(5) "Professional fund raising event counsel" means any person who, for compensation, plans, manages, advises, or consults for a 501(c)(3) organization for the operation of an annual event in this state, but who does not employ, procure, or engage any person to organize or operate an annual event on behalf of a 501(c)(3) organization. "Professional fund raising event counsel" does not include an attorney, investment counselor, or banker who in the conduct of such person's profession advises a client;

(6) "Professional fund raising event manager" means any person who, for a financial or other consideration, organizes or operates for, or on behalf of, a 501(c)(3) organization of an annual event, whether such organization or operation is performed personally or through such person's agents, servants, or employees or through agents, servants, or employees specially employed by or for a 501(c)(3) organization, who are engaged in the organization or operation of the annual event under the direction of such person, or a person who plans, conducts, manages, carries on, or advises a 501(c)(3) organization in connection with the annual event. Any independent marketing agent or entity to whom a professional fund raising event manager assigns organizational or operational responsibilities shall be deemed to be a professional fund raising event manager for purposes of this part. A salaried officer or permanent employee of a 501(c)(3) organization is not deemed to be a professional fund raising event manager. However, any salaried officer or employee of a 501(c)(3) organization that engages in the organization or operation of an annual event for compensation in any manner for more than one (1) 501(c)(3) organization is deemed to be a professional fund raising event manager. A professional fund raising event manager does not include an attorney, investment counselor, or banker who in the conduct of such person's profession advises a client; and

(7) "Secretary of state" means the secretary of state or the secretary of state's authorized representative.

SECTION 3. An annual event shall only include activities permissible pursuant to the provisions of section 5 of Article XI of the Constitution of Tennessee but shall not include bingo or casino games.

SECTION 4. No 501(c)(3) organization shall conduct an annual event without receiving a permit for such event from the secretary of state.

SECTION 5.

(a) At least sixty (60) days but no more than one hundred twenty (120) days prior to holding an annual event, a 501(c)(3) organization shall file an application for a permit to hold an annual event with the secretary of state which includes the following:

- (1) A copy of the letter received from the internal revenue service recognizing the 501(c)(3) organization's tax exempt status;
- (2) A copy of the 501(c)(3) organization's internal revenue service Form 1023, including all attached schedules, if any;
- (3) A copy of the 501(c)(3) organization's last annual report filed with the internal revenue service (form 900, 900-EZ, or 990-PF) and all attached schedules, if any;
- (4) A copy of organizational documents that prove to the satisfaction of the secretary of state that the 501(c)(3) organization has been in existence for at least three (3) years;
- (5) A waiver of privacy rights, on a form provided by the secretary of state, which will allow inspection by any member of the public of tax forms and documents filed pursuant to this section;
- (6) The principal address of the 501(c)(3) organization and the address of any offices in this state. If the 501(c)(3) organization does not maintain an office, the name and address of the person having custody of its financial records;
- (7) The names and addresses of any chapters, branches, or affiliates of the 501(c)(3) organization in this state;
- (8) The names and addresses of the officers, directors, trustees, and the principal salaried executive staff officer of the 501(c)(3) organization;
- (9) The names and addresses of all professional fund raising event counsel and professional fund raising event managers employed by the 501(c)(3) organization in connection with the annual event for which a permit is sought and copies of any contracts with such persons;
- (10) A copy of authorization by the general assembly for the 501(c)(3) organization to hold the annual event;
- (11) A statement that the 501(c)(3) organization has not conducted an annual event during the period of one (1) year prior to the date of the annual event for which a permit is sought;
- (12) A description of the annual event; and

(13) The dates, time, and location of the annual event.

(b) The secretary of state shall issue the permit for the annual event if:

(1) All filing requirements of subsection (a) are met;

(2) The secretary of state determines that the 501(c)(3) organization has been issued a letter from the internal revenue service recognizing that it is a tax exempt organization which is valid at the time of filing an application for the annual event permit;

(3) The secretary of state verifies from the records of the secretary of state that the 501(c)(3) organization has not conducted an annual event for a period of one (1) year prior to the date proposed to conduct the annual event for which a permit is sought; and

(4) The 501(c)(3) organization has paid the application fee.

SECTION 6. The secretary of state shall establish a reasonable fee for annual event applications. Such fee shall be adequate to pay the cost to the state of the application process. Fees collected under the provisions of this part shall be used by the secretary of state to defray the cost of administering this part.

SECTION 7. No later than thirty (30) days after an annual event is held, the 501(c)(3) organization shall file a report with the secretary of state if the 501(c)(3) organization did not employ a professional fund raising event manager or professional fund raising event counsel in connection with the annual event. Such report shall include:

(1) The gross amount of money received from the proceeds of the annual event;

(2) The amount of proceeds disbursed or to be disbursed to each 501(c)(3) organization from the proceeds of the annual event; and

(3) The amounts spent for overhead, expenses, commissions, and similar purposes.

Failure to file such report or filing such report after the deadline shall disqualify the 501(c)(3) organization from holding an annual event for a period of three (3) years.

SECTION 8.

(a)

(1) No person shall act as a professional fund raising event manager for any 501(c)(3) organization unless such person has first registered with the secretary of state. Registration shall include the filing of a complete application, bond, and filing fee.

(2) No person who has been convicted within the past five (5) years for a violation of any provision of this part, and no person convicted of a felony in this or any other state, shall be eligible for registration or to serve as an employee, member, officer, or agent of any professional fund raising event manager until such person's civil rights have been restored.

(3) Application for registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain such information as the secretary of state may require. A registration application that contains false, misleading, deceptive, or incomplete information or documents shall not be considered sufficient or complete. All registrations for professional fund raising event managers shall expire on December 31 of the year for which they are issued.

(4) Applications received after December 31 shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the application is late filed. The late filing fee shall accompany every late-filed application. In addition to the late fee provided for herein, any organization which files a late application is also subject to the imposition of civil penalties for violation of any portion of this section.

(5) A bond in the sum of twenty-five thousand dollars (\$25,000) shall be filed with the registration application and shall be approved by the secretary of state. The bond shall name the applicant as the principal obligor with one (1) or more sureties, satisfactory to the secretary of state, whose liability in the aggregate as such sureties will at least equal that sum. The bond shall be payable to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of the bond for any violations under this part or for any losses resulting from malfeasance, nonfeasance, or misfeasance in the conduct of annual event activities. An individual, partnership, or corporation, which is a professional fund raising event manager, may file

a consolidated bond on behalf of all its members, officers, and employees. The bond shall continue in effect so long as a registration is in effect.

(6) The annual registration fee for every person who is a professional fund raising event manager shall be eight hundred dollars (\$800).

(b) The professional fund raising event manager shall bear the responsibility of the registration and bonding of all of the professional fund raising event manager's employees who work in conjunction with any annual event. Every person shall, before being employed in any manner whatsoever by a professional fund raising event manager, subject to this part, make application to the secretary of state for registration as an employee. Such application, which shall be on forms prescribed by the secretary of state, shall include, but not be limited to, the applicant's full name, permanent address, telephone number, social security number, date of birth, any temporary local address, and telephone number, and any felony convictions or misdemeanor convictions involving violations of any state or local charitable solicitations law. The applicant shall also disclose any arrests or indictments for any alleged offense involving moral turpitude, any civil, administrative, or any other actions in which the applicant is involved pursuant to any state or local charitable solicitations law or any civil, administrative, or other actions filed against any other professional fund raising event manager with which the applicant is affiliated pursuant to any state or local law. The applicant shall provide the complete case style, summary, and disposition, if applicable, of any of the legal actions described in this subsection which have been or are presently pending against the applicant. In addition, the secretary of state may require the filing of any other information which the secretary of state deems necessary. The annual fee for an employee registration shall be ten dollars (\$10.00).

(c)

(1) No person shall act as a professional fund raising event counsel for any 501(c)(3) organization unless such person has first registered with the secretary of state. Registration shall include the filing of a complete application, a bond, and filing fee.

(2) Application for registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain such information as the secretary of state may require. A registration application that contains false, misleading, deceptive,

or incomplete information or documents shall not be considered sufficient or complete.

All registrations for professional fund raising event counsel shall expire on December 31 of the year for which they are issued.

(3) A bond in the sum of twenty-five thousand dollars (\$25,000) shall be filed with the registration application and shall be approved by the secretary of state. The bond shall name the applicant as the principal obligor with one (1) or more sureties, satisfactory to the secretary of state, whose liability in the aggregate as such sureties will at least equal that sum. The bond shall be payable to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of the bond for any violations under this part or for any losses resulting from malfeasance, nonfeasance, or misfeasance in the conduct of annual event activities. An individual, partnership, or corporation, which is a professional fund raising event counsel, may file a consolidated bond on behalf of all its members, officers, and employees. The bond shall continue in effect so long as a registration is in effect.

(4) Applications received after December 31 shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the application is late filed. The late filing fee shall accompany every late filed application. In addition to the late fee provided for herein, any person who files a late application is also subject to the imposition of civil penalties for violation of any portion of this section.

(5) The annual registration fee for every person who is a professional fund raising event counsel shall be two hundred fifty dollars (\$250).

(d)

(1) A professional fund raising event manager shall file a financial report for an annual event with the secretary of state within ninety (90) days after the annual event has been completed. The financial report shall include gross revenue and an itemization of all expenditures from those funds. The report shall be completed on a form prescribed by the secretary of state and signed by an authorized official of the professional fund raising event manager and two (2) authorized officials of the 501(c)(3) organization, who shall certify under oath that such report is true and complete to the best of their

knowledge. The financial report shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards or regulations which may be issued by the secretary of state. If the annual event which is conducted by a professional fund raising event manager is one conducted nationally or regionally and is not confined only to this state, the financial information required to be filed pursuant to this subsection shall be inclusive of the national or regional campaign. Each 501(c)(3) organization shall make available to its professional fund raising event manager any necessary fiscal or other records needed to enable the professional fund raising event manager to comply with this subsection.

(2) Financial reports for annual events shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the report is late filed. The late filing fee shall accompany every late filed report. In addition to the late fee provided for herein, any person who files a late financial report is also subject to the imposition of civil penalties for violation of any portion of this section.

(3) A professional fund raising event manager or professional fund raising event counsel who, by contractual agreement with a 501(c)(3) organization, does not receive funds on behalf of the 501(c)(3) organization, does not have access to the funds raised, and does not make deposits to, and does not have signature authority with, or any other authority over, a 501(c)(3) organization's bank accounts, shall not be required to file an audited financial statement as set forth in subdivision (d)(1). In lieu of the audited financial statement, the professional fund raising event manager or professional fund raising event counsel shall be required to file with the secretary of state, on a form approved by the secretary of state, a financial report which provides an itemization of expenses, costs, reimbursements, and fees the 501(c)(3) organization is charged for each annual event. The form shall be due within ninety (90) days after the completion of any annual event. The report shall be signed by an authorized official of the professional fund raising event manager or the professional fund raising event counsel and two (2) authorized officials of the 501(c)(3) organization, who shall certify under oath that such report is true and complete to the best of their knowledge.



## SECTION 9.

(a) Any applicant who is denied a permit may have a reconsideration of its denial by the secretary of state within ten (10) days from the date of notification of such denial. Within twenty (20) days from the date of notification of such denial after reconsideration, the aggrieved party may request, in writing, a hearing before the secretary of state. The hearing shall be held within a reasonable time from the date of the request, unless the applicant requests a longer period in writing. Hearings shall be held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Judicial review of final decisions shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

## SECTION 10.

(a) The secretary of state shall examine each application under this part for conformity with the requirements of this part and all relevant rules and regulations.

(b) A renewal of registration of a professional fund raising event manager or professional fund raising event counsel shall be made in the same manner as the initial registration. The renewal registration shall be accompanied by the following:

(1)

(A) A copy of a financial statement on all annual events of the professional fund raising event manager or professional fund raising event counsel on forms approved by the secretary of state. Such report shall also specifically identify the amount of funds raised and all costs and expenses incidental thereto, all publicity costs, and costs of allocation or disbursement of funds raised. The registrant shall certify that such report is true and correct to the best of such registrant's knowledge; and

(B) The secretary of state may accept, under such conditions as the secretary of state may prescribe, a copy or duplicate original of any and all forms required to be filed by the professional fund raising event manager or professional fund raising event counsel with the United States internal revenue service and shall require, by regulation, such other information and

documentation as the secretary of state may deem appropriate to describe how funds were raised and spent to substantiate the figures on the reported return, including an accountant's statement and proof that the return submitted to the secretary of state was in fact filed with the United States internal revenue service;

(c) Applications received after the expiration of the current registration period shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the application is late filed. The late filing fee shall accompany every late filed application. In addition to the late fee provided for herein, any person which files a late application is also subject to the imposition of civil penalties for violation of any portion of this part.

(d) Any person that intends to organize or operate an annual event after its anniversary date and fails to renew its registration by the time of the expiration thereof is in violation of this part.

(e) Any person required to be registered that ceases to organize or operate annual events after registration must notify the secretary of state of such fact within thirty (30) days after such activities end. Within ninety (90) days after the end of the activities or ninety (90) days after its fiscal year ends, that person shall file with the secretary of state financial documentation, pursuant to subsection (b).

#### SECTION 11.

(a) Every 501(c)(3) and professional fund raising event manager, subject to the provisions of this part, shall, as to their activities in Tennessee as may be covered by this part and in accordance with the rules and regulations prescribed by the secretary of state, keep:

(1) True and accurate fiscal records, including, but not limited to, all income and expenses; and

(2) True records regarding the conduct of any annual event, including records of any documents, information, notices, or applications required to be prepared or filed pursuant to this part. Unless otherwise provided, such records shall be retained for a period of at least three (3) years after the end of the annual event to which they relate.

(b) Upon request and at a reasonable time and place within Tennessee, such records, as well as any other records regarding annual events within this state, shall be made available

to the secretary of state, the attorney general and reporter, or an appropriate district attorney general for inspection.

SECTION 12. Applications, reports, and all other documents and information required to be filed under this part or by the secretary of state shall be public records in the office of the secretary of state and shall be open to the general public for inspection at such time and under such conditions as the secretary of state may prescribe. The secretary of state, in the secretary of state's discretion, may compile, summarize, publish, or otherwise release to the public any information contained in applications and any other documents filed with or received by the secretary of state under this part.

### SECTION 13.

(a)

(1) The secretary of state, upon the secretary of state's own initiative or upon complaint of any person, if the secretary of state has reasonable ground to suspect any violation of this part or any rule thereunder or to aid in enforcement of this part, may publicly or privately investigate as the secretary of state deems necessary any 501(c)(3) organization, professional fund raising event counsel, professional fund raising event manager, or other person to determine whether such person or organization has filed any application or other information required under this part that contains false or misleading statements, has conducted any annual event by any unfair, false, misleading, or deceptive means or manner, or has otherwise violated any provision of this part. Further, the secretary of state, or the secretary of state's authorized representative, may impose a civil penalty of not more than five thousand dollars (\$5,000) for each and any violation of this part or a rule thereunder. Upon notice to the affected parties of an order by the secretary of state that sanctions should be imposed, including civil penalties, the affected party may seek review of that decision by requesting a contested case hearing, which shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) Any civil penalty shall be enforced in the following manner:

(A) If a petition for review of the assessment of a penalty through a contested case hearing is not filed within thirty (30) days after the date the assessment is served, the affected party shall be deemed to have consented to the assessment and it shall become final;

(B) Whenever any assessment has become final, because of a person's failure to appeal the secretary of state's assessment or otherwise, the secretary of state, in the name of the state, may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(C) The secretary of state may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation or failure to comply occurred, or in the county in which such person resides, or has conducted or transacted business or annual events.

(b)

(1) In conducting a public or private investigation as set forth in this part, the secretary of state or the secretary of state's authorized representative may issue subpoenas and summon witnesses, administer oaths to such witnesses, take the depositions of witnesses, compel the production of documents, exhibits, records, or things, and require testimony on any issue related to the investigation.

(2) The secretary of state may visit, investigate or place investigative personnel in the office or places of operation of a 501(c)(3) organization, professional fund raising event counsel, or professional fund raising event manager.

(3) In addition to the authority to inspect fiscal or other records set forth in this part, the secretary of state, in conducting a public or private investigation, may compel by either a request for production of documents, exhibits, or things, or subpoena duces tecum the presentation or delivery of all books, records, documents, or other tangible

items, by any person, which the secretary of state believes to be pertinent to the conduct of such investigation.

(4) Subpoenas under this part may be served by registered mail, return receipt requested, to the addressee's registered mailing address, or by such personnel as the secretary of state may designate, or shall be directed for service to the sheriff of the county where such witness resides, is conducting an annual event, or is found or where such person in custody of any books, records, or papers resides or is found.

(5) In case of a refusal to obey a subpoena issued to any person under this part, any circuit or chancery court of this state within the jurisdiction in which the person refusing to obey the subpoena resides or is found may issue to such person, upon application by the secretary of state, an order requiring such person to appear before the court to show cause why such person should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as a contempt of court.

(6) At any time prior to the return date specified in the secretary of state's subpoena or request for production of documents, exhibits, or things pursuant to this subsection, or within the ten (10) days following service of such subpoena or request, whichever is shorter, any person from whom information has been requested may petition the circuit or chancery court of Davidson County, stating good cause, for a protective order to extend the return date for a reasonable time, or to modify or set aside the subpoena or request for production. The secretary of state shall receive at least one (1) day's notice of such a petition and shall be given an opportunity to respond.

(7) Any person who has received a subpoena or request for production pursuant to this part, and who, with intent to avoid, evade or prevent compliance, in whole or in part, removes from any place, conceals, withholds, destroys, mutilates, falsifies, or by any other means alters any documentary material in the possession, custody, or control of any person subject to such notice, is subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500) recoverable by the state in addition to any other appropriate sanction.

(c)

(1) Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this part or any rule or order hereunder, and that proceeding would be in the public interest, the secretary of state may in the secretary of state's discretion bring an action, in the name of the state, through the attorney general and reporter in the circuit or chancery court of any county of this state, to:

(A) Enjoin the acts, practices, or violations of this part;

(B) Impose civil penalties;

(C) Appropriately remedy damages caused directly or indirectly by any violations of this part;

(D) Prohibit the disposing of any funds or altering in any other way the financial status of that person or organization;

(E) Enforce compliance with this part, or any rule, or order hereunder; and

(F) Provide other appropriate relief for violations of this part.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged violation of this part took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted annual events or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) Upon a showing of a violation of this part, the courts are authorized to:

(A) Issue orders to restrain or enjoin, temporarily or permanently, violations of this part;

(B) Disgorge proceeds from unlawful annual events;

(C) Provide restitution to injured 501(c)(3) organizations;

(D) Forfeit to the state any unlawfully obtained funds;

(E) Prohibit the disposal of assets or any funds or the altering of the financial status of any person or organization in violation of this part;

(F) Appoint a receiver or conservator of a defendant's assets; and

(G) Grant other proper equitable relief.

(4) The court may not require the secretary of state to post a bond, and no costs shall be taxed to the secretary of state in actions commenced under this part.

(5) Whenever any order for injunctive relief or other relief is granted in an action, or pursuant to an application by the secretary of state in the name of the state under this part, reasonable costs, including the costs of investigation, and attorney's fees may be awarded to the secretary of state, for use by the secretary of state in defraying the costs of administering this part.

(6) Any intentional violation of the terms of an injunction or order for other relief issued pursuant to subdivision (3) shall be prima facie evidence of a violation of this part in any action brought pursuant to this section and is punishable by a civil penalty of not more than ten thousand dollars (\$10,000) recoverable by the state for each violation, in addition to any other appropriate relief.

(d) The secretary of state, or the secretary of state's designee, may appear before any court of competent jurisdiction empowered to issue warrants of arrest in criminal cases and request the issuance of a warrant; upon presentation of probable cause, the court shall issue a warrant directed to any sheriff, deputy sheriff, or police officer.

#### SECTION 14.

(a) Any 501(c)(3) organization, professional fund raising event counsel or professional fund raising event manager which has its principal place of business outside the state, or which is organized under and by virtue of the laws of a foreign state, and which holds an annual event in this state, shall be subject to the provisions of this part and shall be deemed to have irrevocably appointed the secretary of state as its agent upon whom may be served any summons, subpoena duces tecum, or other process directed to such 501(c)(3) organization, professional fund raising event counsel, professional fund raising event manager, or any partner, principal officer, or director thereof in any action or proceeding brought under the provisions of this part.

(b) Service of such process upon the secretary of state shall be made by personally delivering to and leaving with the secretary of state a copy thereof at the capitol in Nashville. Such service shall be sufficient service; provided, that notice of such service and a copy of such process are forthwith sent to such 501(c)(3) organization, professional fund raising event counsel, or professional fund raising event manager by registered or certified mail with return receipt requested at its office, as set forth in the application for permit required to be filed with the secretary of state pursuant to this part or, in default of the filing of such forms, at the last address known.

SECTION 15. The powers and remedies provided in this part shall be cumulative and supplementary to all other powers and remedies otherwise provided by law. The invocation of one (1) power or remedy herein shall not be construed as excluding or prohibiting the use of any other available remedy.

SECTION 16. The secretary of state shall make such individual investigations of all applicants for registration and of any violations of this part as the secretary of state may deem necessary and impose authorized and appropriate sanctions.

SECTION 17. The secretary of state is authorized to promulgate rules and regulations as the secretary of state may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 18. Any person who intentionally files false information required to be filed by the provisions of this act or intentionally fails to file any information required by the provisions of this act commits a Class E felony, punishable by one (1) to six (6) years in prison and a fine not to exceed fifty thousand dollars (\$50,000).

SECTION 19. This act shall take effect on July 1, 2004, the public welfare requiring it